

THE HONORABLE JAMES L. ROBART

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PRADYUMNA KUMAR SAMAL,

Defendant.

No. CR-18-214 JLR

DEFENSE SENTENCING
MEMORANDUM

I. INTRODUCTION

The defendant, PK Samal, is before the Court for sentencing pursuant to his guilty plea to: Count 1, Mail Fraud, and Count 2, Failure to Pay or Collect or Pay Over Tax. Sentencing is presently scheduled before the Honorable James L. Robart for September 20, 2019 at 9:30 a.m.

P.K. Samal is a complex, interesting and ultimately troubled man. His ability to take an idea, grow it into a flourishing business, and make a profit is a skill few people possess. With that ability and with the drive it takes to succeed as an entrepreneur in the highly competitive world of computer and technological innovation, comes—for Mr. Samal at least—a certain callousness and a win at all cost mentality. When Mr. Samal realized he could grow his H1-B operations by

1 falsifying end client letters to grow the pool of potential H1-B workers he did it,
2 never imagining that his own incarceration would be the end result.

3 And yet, Mr. Samal is also, without question, a loyal husband, dedicated
4 father and involved member of our community. He is sharp-witted, funny and at
5 times wryly self-deprecating. It has not been easy to watch him struggle and fight
6 to shield his family from the tremendous fallout of his poor decision-making.

7 This investigation and this prosecution have forced Mr. Samal to accept
8 that he is flawed. That a person's character is not just what they do at home but
9 also what they do at work. That the ends do not always justify the means. And
10 that the wall that is often built between the professional side of one's life and the
11 personal side is not unbreakable. During the pendency of this case, Mr. Samal has
12 faced his own flaws and he has owned those flaws, both in formally accepting
13 responsibility for these offenses but also in sitting down with his sons to explain
14 that he made a horrible mistake in the name of success. His teenage sons have
15 gone from a life of affluence and privilege to one of struggle, confusion and
16 shame. It seems unlikely that Mr. Samal will ever forgive himself for what has
17 happened to their lives. See Exhibit A, Mr. Samal's Letter Accepting
18 Responsibility.

19 There is, however, a glimmer of hope here. When Mr. Samal stepped onto
20 the plane to return to the United States from India—knowing that he would be
21 arrested, knowing that he would be charged in federal court, knowing that his life
22 would never be the same—he demonstrated to himself, to his family, and
23 ultimately to this Court, that he is done making excuses for the decisions that he
24 has made. In pleading guilty to these offenses, he has stopped blaming other
people for his mistakes, he has stopped making excuses, and he has shown that he
understands that there is no such thing as a good person who only acts deceptively
to succeed in business.

25 The question now, of course, is what length of incarceration is appropriate.
Mr. Samal and his counsel respectfully request that the Court impose a custodial

1 sentence of 18 months which will be followed by two years or more of custody in
2 ICE detention.

3 **II. ADVISORY SENTENCING GUIDELINE CALCULATIONS**

4 **A. COUNT 1**

- 5 1. The base offense level is 7, pursuant to U.S.S.G. § 2B1.1(a)(1). **7**
- 6 2. A 16-level enhancement is warranted, pursuant to U.S.S.G. §
7 2B1.1(b)(1)(I), due to the parties' stipulation that Mr. Samal's
8 offense involved a gain of \$1,625,532.84 so that the gain exceeds
9 \$1.5 million but is less than \$3.5 million. **+16**
- 10 3. A four-level leadership enhancement is warranted, pursuant to
11 U.S.S.G. § 3B1.1(a). **+4**
- 12 4. A three-level downward departure is warranted, pursuant to
13 U.S.S.G. § 3E1.1(a)-(b), for acceptance of responsibility. **-3**

14 **Offense Level = 24**

15 **B. COUNT 2**

- 16 1. The base offense level is 20, pursuant to U.S.S.G. §§ 2T1.6 &
17 2T4.1(H) as Mr. Samal failed to pay \$1,119,867.00 in taxes. **20**
- 18 2. A three-level downward departure is warranted for acceptance of
19 responsibility, pursuant to U.S.S.G. § 3E1.1(a)-(b). **-3**

20 **Offense Level = 17**

21 **C. GROUPING**

22 U.S.S.G. § 3D1.2(d) directs that Count 1, covered by U.S.S.G. § 2B1.1, and
23 Count 2, covered by U.S.S.G. § 2T1.6, must be grouped together.

24 Then, pursuant to U.S.S.G. § 3D1.3(b), the combined offense level of the
single resulting Group is based upon the aggregated quantity and covered by the
Guideline that produces the highest offense level. As the total combined monetary
gain is \$2,745,399.84 (\$1,625,532.84 + \$1,119,867.00), the Guideline calculations
remain unchanged and Mr. Samal's total offense level is **24**.

25 **D. THE STANDARD RANGE**

26 With a total offense level of 24 and Criminal History Category II, Mr.
27 Samal's *advisory* standard range is 57-71 months.

1 **III. OBJECTIONS TO THE PRESENTENCE REPORT**

2 The final presentence report (“PSR”) filed on August 16, 2019 incorporated
3 the parties’ stipulation to the amount of financial gain involved in Count 1.

4 While the defense does not want to quibble with the facts, a few
5 clarifications are required.

6 First, the PSR alleges that it was improper for Mr. Samal to charge security
7 deposits for the H-1B applicants. According to Mr. Samal’s former immigration
8 attorney, however, the practice comports with all legal regulations. See Exhibit B,
9 Declaration of Diane M. Butler at 3, ¶10. And, the Companies rightly did not
10 return the deposits if the visa holders did not fulfill the terms of their contracts.

11 Ms. Butler also disputes the allegation that the alleged “bench and switch”
12 scheme was violative of any regulation. See id. at 4-6, ¶¶14-20.

13 **A. AN ENHANCEMENT FOR “SOPHISTICATED MEANS” IS
14 UNWARRANTED**

15 The PSR suggests that an enhancement pursuant to U.S.S.G. §
16 2B1.1(b)(10) is warranted because

- 17 (1) a substantial part of the fraudulent scheme was committed from
18 outside the United States as Mr. Samal had several employees in
19 India who recruited foreign nationals, prepared them for consular
20 interviews in India, and collected visa fees from them in India, and
21 (2) Mr. Samal used sophisticated means to carry out the scheme, by
22 doctoring documents, manipulating immigration filings, and using
23 amendments to whitewash the fraud.

24 PSR at 9, ¶38.

 A two-level enhancement applies where “a substantial part of the fraudulent
scheme was committed from outside of the United States” or where “the offense
otherwise involved sophisticated means and the defendant intentionally engaged in
or caused the conduct constituting sophisticated means.” U.S.S.G. §
2B1.1(b)(10)(B)-(C). The Government, however, cannot fulfill its burden of
demonstrating by a preponderance of the evidence that either prong applies.

1 **1. A Substantial Part of the Scheme Was Not Committed from Outside**
 2 **of the United States**

3 First, it is clear that a “substantial part” of Mr. Samal’s scheme *did not*
 4 occur in India. Mr. Samal maintained independent business operations in India
 5 and only employed a single recruiter during the 2015 calendar year—when the
 6 Government approved none of the H-1B petitions. The scheme, itself, involved
 7 submitting H-1B applications with forged signatures. This occurred solely within
 8 the United States.

9 While there is little authority in this Circuit regarding this prong, United
 10 States v. Duperval, 777 F.3d 1324 (11th Cir. 2015) provides guidance. The
 11 Duperval Court found that the enhancement applied because the goal of the
 12 defendant’s wire fraud scheme was to secure favors from a telecommunications
 13 company, the defendant worked for the company in Haiti, lived in Haiti, and met
 14 with his co-conspirators in Haiti. Id. at 1336.

15 Here, by contrast, there is no evidence that Mr. Samal perpetrated his
 16 scheme from abroad—lest that a “substantial part” of the scheme occurred
 17 abroad.

18 **2. Mr. Samal’s Scheme Did Not Involve Sophisticated Means**

19 As to otherwise sophisticated means, this prong is likewise inapplicable
 20 because Mr. Samal did not engage in “especially complex or especially intricate
 21 offense conduct pertaining to the execution or concealment of an offense.” See
 22 U.S.S.G. § 2B1.1(b) cmt. n.9(b). The Application Note further provides:
 23 “Conduct such as hiding assets or transactions or both, through the use of fictitious
 24 entities, corporate shells, or offshore financial accounts also ordinarily indicates
 sophisticated means.” Id. Because none of these factors are present, the
 enhancement is unwarranted.

 The PSR seeks application of the enhancement because Mr. Samal doctored
 documents and manipulated immigration filings. Such acts, however, are the very

1 simple basis for Count 1—the filing of the H-1B petitions with forged end-client
2 letters.

3 With respect to the amendments, this is par for the course when H-1B
4 applicants take new jobs or some other circumstance changes. Rather than file the
5 amendments to hide his scheme, the amendments actually brought the Companies
6 into compliance. In addition, of the 71 new H-1B recruits cited by the
7 Government whose petitions contained forged signatures, there were no
8 amendments as to those individuals. And, finally, the Companies did file
9 amendments, as required, if the job placement was more than 30 miles away.

10 Immigration attorney Diane M. Butler, by contrast, notes that USCIS's
11 policy regarding amendments was “liberal and flexible” until April 9, 2015. See
12 Ex. B at 6, ¶¶20-21. Even after promulgation of the new rules, not all
13 reassignments required amendments; and, USCIS announced that it would
14 exercise discretion to accommodate petitioners who had followed the previous
15 rules and also offered a “safe harbor” period for filing amended or new petitions
16 through January 15, 2016. Id. at 6-7, ¶¶23-25. In Ms. Butler's legal and
17 professional opinion, Mr. Samal was aware of the policy changes and endeavored
18 to ensure his Companies were in compliance. Id. at 7, ¶27.

19 Here, then, Mr. Samal submitted forged signatures on official documents
20 and then mailed the documents to the Government in the most basic form of
21 visa/mail fraud.

22 In United States v. Valdez, for example, the Court reversed the district
23 court's application of the enhancement where the defendant took money
24 fraudulently obtained from Medicare and directly deposited into his bank account
into his operating account, which was in his name, and moved it into his
investment account, also in his name. 726 F.3d 684, 695 (5th Cir. 2013). The
Court concluded that “there is no indication that this open and transparent direct
deposit and movement of funds involved sophisticated means or could have made
it more difficult for his offense ... to be detected.” Id.

1 Here, Mr. Samal's conduct is akin to the defendant's conduct in United
 2 States v. Hulse, in which the Court determined that the enhancement was inapt.
 3 989 F.Supp.2d 1224 (M.D. Ala. 2013). Analogous to the Hulse defendants, Mr.
 4 Samal personally "signed documents, made representations, and received funds in
 5 [his] own name[.]. While corporations were involved, including overseas
 6 corporations in tangential respects, nothing about the involvement of the corporate
 form suggests the intent or effect of concealing the offense." Id. at 1226.

7 The Hulse Court further noted that for the enhancement to apply, "the level
 8 of complexity or intricacy must set that particular scheme apart from ordinary
 9 schemes, and even ordinarily complex or intricate schemes." Id. As the Court
 explained:

10 The reasoning behind this heightened requirement is obvious. The
 11 essence of fraud involves deceit or deception. See Black's Law
 12 Dictionary (9th ed. 2009) (fraud involves a "knowing
 13 misrepresentation of the truth or concealment of a material fact").
 14 More likely than not, some complexity will always be required to
 15 carry out such deceit. If the only requirement to apply this
 enhancement were some complexity, nearly every fraud would
 16 qualify. Therefore, to assure that this guideline does not result in a
 17 defendant being punished twice for fraud, the drafters of the
 18 guidelines restricted the enhancement to only those schemes that
 19 are especially complex or intricate.

20 The court recognizes that the scheme here involved large sums of
 21 money and the use of complex financial instruments, but neither of
 22 these circumstances nor any of the circumstances cited by probation
 23 or the government, alone or collectively, establishes that the scheme
 24 itself was "especially" complex or intricate. Rather, considering all
 of the circumstances of these crimes, the court finds that the scheme
 was rather straightforward. At its core, this scheme was essentially a
 series of unabashed lies, in which, first, Hulse claimed to be a very
 wealthy man with bonds worth millions of dollars that he could offer
 as collateral for loans, and Mock and Teers similarly claimed that
 Hulse was a very wealthy man; and in which, second, Hulse then
 fraudulently used the loan proceeds for purposes not authorized by
 the loans. That is, the crux of this case is that the defendants lied to
 obtain money and then lied about the use of the money. As such, the

1 court is not convinced that this scheme was especially complex,
 2 intricate or anything else. It just involved an unusually large amount
 3 of money, about which the defendants lied. Since the defendants'
 4 offense level already amply reflects their culpability based on the
 loss amount, the court finds that the circumstances here do not
 warrant an additional sophisticated-means enhancement.

Id. at 1226-27.

5 Here, in like manner, Mr. Samal used forged signatures on documents that
 6 he personally signed and then conducted business as usual. As there is no
 7 evidence that his scheme is anything more than garden-variety visa/mail fraud, the
 8 sophisticated means enhancement is inapplicable.

9 **C. AN ENHANCEMENT FOR USING A MEANS OF**
 10 **IDENTIFICATION TO OBTAIN ANOTHER MEANS OF**
 11 **IDENTIFICATION IS UNWARRANTED**

12 The PSR recommends application of a two-point enhancement, pursuant to
 13 U.S.S.G. § 2B1.1(b)(11)(C)(I) based upon the belief that Mr. Samal “used a means
 14 of identification unlawfully to obtain another means of identification, specifically,
 15 Mr. Samal used signatures belonging to his clients when forging letters for use in
 16 the fraudulent petitions.” PSR at 9, ¶39.

17 While unclear, the Government seems to suggest that the fact that Mr.
 18 Samal used forged signatures in the H-1B petitions, which is the actual offense
 19 conduct for Count 1, somehow constitutes two different means of identification.
 20 This is error.

21 U.S.S.G. § 2B1.1(b)(11)(C)(I) provides that a two-level enhancement
 22 applies where the defendant used “any means of identification unlawfully to
 23 produce or obtain another means of identification.”

24 “Means of identification,” in turn, “means any name or number that may be
 used, alone or in conjunction with any other information, to identify a specific
 individual, including any--

- (A) name, social security number, date of birth, official State or government
 issued driver's license or identification number, alien registration number,
 government passport number, employer or taxpayer identification number;

(B) unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;

(C) unique electronic identification number, address, or routing code; or

(D) telecommunication identifying information or access device (as defined in section 1029(e)).

See U.S.S.G. § 2B1.1(b) cmt. n.1 (citing 18 U.S.C. § 1028(d)(7)).

Although a signature *ostensibly* constitutes a means of identification, see United States v. Sardariani, 754 F.3d 1118, 1121–22 (9th Cir. 2014), the Commentary to the Guideline is explicit: “Forging another individual’s signature **is not** producing another means of identification.” Id. at cmt. n.10(C)(iii)(II) (emphasis added).

More to the point, though, is the fact that 18 U.S.C. 1028(d)(7) clearly “does not include mail or an address within the list of means of identification; nor are the examples easily analogized to a piece of mail or an address.” United States v. Hawes, 523 F.3d 245, 250 (3d Cir. 2008). An “address or piece of mail does not seem to fit the Guideline’s definition of ‘means of identification.’” Id. at 252.

Here, then, as Mr. Samal used forged signatures on mailings that are not, themselves, means of identification, the enhancement cannot apply.

D. AN ENHANCEMENT FOR OBSTRUCTION OF JUSTICE IS UNWARRANTED

1. Relevant Facts

Mr. Samal and his employees, pursuant to legal advice, cleaned up the client files during the fall of 2016—well before any criminal investigation. Even though they removed the fraudulent end client letters from the hard copy public access file as directed by the Murthy Law Firm audit, a copy of which is attached hereto as Exhibit C, the documents remained on the computer servers and in emails—as is legally required. The Government actually produced such evidence in discovery. Mr. Samal, moreover, is certainly sufficiently computer-savvy that if he wished to destroy the documents, he would have deleted the electronic files and thereby committed obstruction.

1 Mr. Samal did not flee from justice, but rather went to India on an annual
2 charitable excursion. He later returned to the United States knowing that he would
3 be arrested, but wanted to take responsibility for his conduct.

4 **2. Legal Analysis**

5 A two-level enhancement for obstruction of justice is appropriate, pursuant
6 to U.S.S.G. § 3C1.1, where the defendant “willfully obstructed or impeded, or
7 attempted to obstruct or impede, the administration of justice with respect to the
8 investigation, prosecution, or sentencing of the instant offense of conviction” and
9 such conduct related to the offense of conviction and any relevant conduct or a
10 closely related offense.

11 The Commentary specifically provides that the following types of conduct
12 *do not* constitute obstruction: (1) Making false statements, not under oath, to law
13 enforcement officers—unless such statements were “materially false” and
14 “significantly obstructed or impeded the official investigation or prosecution of the
15 instant offense”; and (2) Avoiding or fleeing from arrest. See U.S.S.G. § 3C1.1
16 cmt. nn.4-5. In addition, “inaccurate testimony or statements sometimes may
17 result from confusion, mistake, or faulty memory and, thus, not all inaccurate
18 testimony or statements necessarily reflect a willful attempt to obstruct justice. Id.
19 at cmt. n.2. These provisions thus easily dispose of the arguments that Mr.
20 Samal’s allegedly false statements to investigators in 2017 and his extended stay
21 in India somehow constitute obstruction.

22 As to the alleged document destruction, in April of 2016, Mr. Samal
23 retained the Murthy Law Firm and agreed in May of 2016 that the firm should
24 conduct an internal audit, which it completed on November 3, 2016. See Ex. C.
Pursuant to the results of the audit, Mr. Samal directed his employees to clean up
and reorganize the office files. While it may be true that the staff removed the
fraudulent end client letters, these are not required in the public access file. See id.
And, more importantly, Mr. Samal and his employees maintained the entirety of
the files on the computer server—which the Government extracted from his

1 computer and produced in discovery. There was thus no actual destruction of
2 anything and no impediment to the investigation.

3 The sole provision that may, arguably, apply to Mr. Samal's conduct is:
4 "Obstructive conduct that occurred prior to the start of the investigation of the
5 instant offense of conviction may be covered by this guideline if the conduct was
6 purposefully calculated, and likely, to thwart the investigation or prosecution of
7 the offense of conviction." See U.S.S.G. § 3C1.1 cmt. n.1. The document
8 reorganization, however, was not obstructive and, given that Mr. Samal retained
9 the documents electronically, he could not possibly have purposefully calculated
10 his behavior to likely thwart the investigation.

11 Finally, while "destroying or concealing or directing or procuring another
12 person to destroy or conceal evidence that is material to an official investigation or
13 judicial proceeding (e.g., shredding a document or destroying ledgers upon
14 learning that an official investigation has commenced or is about to commence), or
15 attempting to do so" typically constitutes obstruction, see U.S.S.G. § 3C1.1 cmt.
16 n.4(D). here, there was no destruction or concealment—just a reorganization to
17 comply with an audit conducted by an immigration law firm.

18 An enhancement for obstruction is thus both factually and legally
19 unwarranted.

20 **IV. DEFENSE SENTENCING RECOMMENDATION**

21 Given PK's guilty plea to mail fraud rather than visa fraud and resulting
22 exposure to increased incarceration in hopes of being able to remain here in his
23 adopted country with his family; his return from India despite knowing he would
24 be immediately arrested; the nature of his hybrid regulatory/criminal conduct; the
fact that he is subject to an *additional* period of ICE confinement unlikely to last
less than two to three years upon his release from federal prison; his age, family
ties, and lack of recidivism; and sincere acceptance of responsibility, the defense
hereby recommends a total sentence of 18 months of incarceration as sufficient,

1 but not greater than necessary, to accomplish the stated purposes of sentencing.
 2 18 U.S.C. § 3553(a).

3 In determining the final sentence to be imposed, the Court should consider:
 4 the nature and circumstances of the offense and the history and
 5 characteristics of the defendant; the need for the sentence imposed to
 6 reflect the seriousness of the offense, to promote respect for the law,
 7 and to provide just punishment for the offense; to afford adequate
 8 deterrence to criminal conduct; to protect the public from further
 9 crimes of the defendant; and to provide the defendant with needed
 educational or vocational training, medical care, or other
 correctional treatment in the most effective manner; the kinds of
 sentences available; the need to avoid unwarranted sentence
 disparities among defendants with similar records who have been
 found guilty of similar conduct; and the need to provide restitution to
 any victims of the offense.

10 Id.

11 Here, given these factors, a sentence of 18 months (to be followed by two
 12 to three years in ICE detention), is thus appropriate.

13 **A. MR. SAMAL'S PERSONAL HISTORY¹**

14 **1. Mr. Samal is a Devoted Family Man**

15 Pradyumna Kumar Samal ("PK") has lived for the past 20 years in the
 16 Seattle area. He wants to remain in the United States. He has spent considerable
 17 amounts of his now extinguished assets on immigration and criminal defense
 18 attorneys in hopes of reaching a resolution that would permit him to stay in the
 19 country he has called home for years—even though he may face more severe
 20 consequences by pleading guilty to Mail Fraud with its 20-year statutory
 maximum sentence, see 18 U.S.C. § 1341, instead of Visa Fraud and its 10-year
 statutory maximum sentence. See 18 U.S.C. § 1546(a).

21 Mr. Samal traveled to the United States with his wife of 22 years, Sagarika,
 22 who is now an American citizen. They have two American citizen children. Their
 23 older son, Ritesh, recently graduated from Bellevue High School and planned to

24 ¹ Much of this section is drawn from Mr. Samal's Motion for Conditional Release Pending Sentencing, Dkt. #54, at 7-10.

1 attend Penn State University and enroll in its computer engineering program, but
2 decided that he had to remain close to home to help care for the family,
3 particularly his fragile mother. He is thus going to matriculate to Bellevue
4 Community College and forestall his education. Their younger son, MS, is about
5 to enter high school.

6 While Mr. Samal is close with his family and his father, Sagarika does not
7 get along very well with her in-laws. In 2008, when Mr. Samal's family visited
8 from India. Sagarika experienced "trigger acute stress as family from India now
9 here on extended visit. [Patient] will need to be admitted for psychiatry
10 medications and anxiety control." See Dkt. #54 at Ex. C. She had to remain
11 hospitalized overnight. She had also experienced a similar event when visiting the
12 same family in India the year prior. See id.

13 Sagarika's relationship with her in-laws is why Mr. Samal bought the house
14 in India, which is heavily encumbered, near his parents' residence—so they can
15 stay there during extended family visits. The family has since lost any interest in
16 the home due to the lack of payments, but Mr. Samal is still obligated to pay the
17 initial loan amount.

18 Sagarika, then, does not react well to stress, and Mr. Samal's absence at
19 this particular time is causing her great difficulties. She does not have a driver's
20 license and does not drive, she has never had a job, and she is having trouble
21 attending to their family and providing for the needs—both emotional and
22 financial—of their children.

23 Mr. Samal's father, moreover, got into a car accident after hearing of his
24 son's arrest and suffered a fractured hip which prevented him from moving for six
months and still inhibits his range of activity.

Mr. Samal's mother, finally, is also elderly, infirmed, and reliant upon
him—especially now that her husband/PK's father is unable to work and provide
support for the family. See Exhibit D, Immediate Family Letters of Support.

1 **2. Mr. Samal is an Extremely Successful Entrepreneur**

2 Mr. Samal is an extremely successful entrepreneur with a strong track
3 record of building successful businesses and creating employment opportunities in
4 the area and will continue to be productive upon release. He arrived in America in
5 2000 with modest expectations, a work visa, and a job that paid \$60,000/year.
6 From there, he founded a series of successful business entities that created jobs
and positively contributed to society.

7 Beginning with just \$50.00, a credit card, and a keen acumen for
8 recognizing opportunity in the technological sector, in 2001, Mr. Samal started his
9 first business. He successfully grew the business, Planet Guru, but operating costs
10 forced closure by 2005. When Planet Guru shut down, Mr. Samal worked to find
jobs for his employees at other locations.

11 In the meantime, Mr. Samal founded another business, Minecode, in 2001.
12 With no money and two credit cards, Mr. Samal was nevertheless able to grow the
13 company to employ 500 employees across the world.. The demise of Minecode
14 was a result of a contract dispute that led Mr. Samal to, unfortunately, take matters
15 into his own hands and resort to criminal activity. As a result of the prior
16 misdemeanor conviction from this District, Mr. Samal owed millions of dollars in
personal liability.

17 In 2010, Mr. Samal founded Divensi and in 2011 he founded Azimetry,
18 again with no financial support. Again, Mr. Samal was able to successfully grow
19 his companies from the ground up. By 2015, he had paid off all of his obligations
20 from the prior case and was able to once more dedicate more of his time and
resources to charitable endeavors.

21 **3. Mr. Samal Donates Significant Time and Resources**

22 In 2004, Mr. Samal started his first charity, Planet Guru Foundation. After
23 a tsunami ravaged parts of Asia in 2004, the Foundation sponsored a fundraiser
24 that received accolades from President Clinton, Governor Gregoire, and Senator
Cantwell.

1 Mr. Samal was also active in helping to build a Hindu temple in Maple
2 Valley, assisting the Women's Center at the University of Washington, and
3 supporting the "Walk for Rice" effort of the Asian Community Referral Service.

4 Mr. Samal further sponsored Palli Spree Jubak Sangha, a rural Indian non-
5 profit that aids children, particularly girls and those suffering from mental and
6 physical disabilities. He not only offered money, but also his time.

7 Minecode offered free or reduced-cost services to non-profit or public
8 service organizations and helped other startup companies. This is actually one of
9 the things Mr. Samal enjoys the most—mentoring entrepreneurs and new start up
10 companies. See, e.g., Exhibit E, Linda Klug's Letter of Support. Ms. Krug relates
11 that she met Mr. Samal in 2016 through a mutual business connection. Over the
12 course of the next year, he helped mentor her to grow her own successful business,
13 Airin, Inc. Id.

14 Mr. Samal's brother-in-law, Siddhartha Samal, likewise relates that Mr.
15 Samal helped him build his career and also attests to his dedication to his work
16 and his family. See Exhibit F, Siddhartha Samal's Letter of Support.

17 In 2011, when unemployment had peaked in Washington, Mr. Samal—
18 through Azimetry—collaborated with several unemployment departments,
19 including WorkSouce, to provide many people with software data analytics
20 training (LiDAR) to veterans and college drop outs. This resulted in the launch of
21 at least 58 successful professional careers with the likes of Microsoft, Google, and
22 Facebook.

23 After Mr. Samal fulfilled his financial obligations in 2015, he was able to
24 dedicate more time and energy to charitable causes. In 2015, he founded Startup
Fair (www.startupfair.org), a non-profit with a goal of helping young
entrepreneurs succeed while not taking any equity or interest in their ventures. It
provided a platform for young start-up companies to present their ideas and
potentially win a cash prize of \$5,000, \$10,000, or \$20,000. The Microsoft
Accelerator Group as well as the University of Washington saw the worthiness of

1 the project and eagerly partnered with the organization to promote and provide a
 2 high visibility platform, product design, and development while Mr. Samal
 3 personally donated the cash awards. Over two years, the organization assisted
 4 nine different start-ups with no personal benefit to Mr. Samal. See, e.g., Exhibit
 5 G, the Letter of Support from Anuradha Vashisht, Managing Trustee of the non-
 profit Nivritti Trust.

6 Mr. Samal also founded the Samal Family Foundation
 7 (www.samalfamilyfoundation.org), whose goal is to contribute to lifelong learning
 8 and stability within the community by: (1) reeducating high school and college
 9 drop outs with free software development training and subsequent job placement;
 10 (2) co-sponsoring a large theological diagnostic meditation center in the
 11 Himalayan Mountains that came to fruition in 2018 when Mr. Samal was visiting
 12 India; and (3) providing material and labor for local community food banks. See,
e.g., Exhibit H, the Letters of Support from Vikas Sharma; Arun Arora, CPA; and
 Mukesh k. Makker.

13 Mr. Samal is community-oriented and used to donate both his time and his
 14 money. He volunteered at Seattle Sangat every week from 11:00 a.m. to 1:00 p.m.
 15 on Mondays and from 6:00 p.m. to 9:00 p.m. on Thursdays helping to prepare
 16 food and set up the meditation stage. He also annually traveled to India to
 17 participate in the non-profit he co-founded to construct a meditation center.

18 He is a devout Hindu, practices meditation, and is a vegan who does not
 19 consume or use any animal products. He has never used drugs and has imbibed
 only on a few social occasions throughout his entire life, but not since 2013.

20 **4. Acceptance of Responsibility and Community Support**

21 As expressed in his letter accepting responsibility, PK fully takes to heart
 22 his situation. See Ex. A. The shock of federal prosecution and incarceration
 23 finally forced him to realize that he essentially abandoned his high personal ethics
 24 and morals and ethics in the business context. With this better understanding of
 himself, he is even more likely to succeed in the future.

1 PK also still has the loving support of his family and community. As the
 2 letters from his family demonstrate, in his personal life, PK is a kind, gentle,
 3 caring, and giving individual. See Ex. D.

4 And, as the additional letters of support demonstrate, he has a community
 5 of people to which to return when he does reintegrate back into society. See
 Exhibit I, Community Letters of Support.

6 **B. MR. SAMAL HAS A LOW RISK OF RECIDIVISM**

7 Given his acceptance of responsibility, the circumstances of the offense, his
 8 strong family support, and his current age of 50, Mr. Samal is an extremely low
 9 risk to recidivate. See, e.g., U.S.S.C, Recidivism Among Federal Offenders: A
 10 Comprehensive Overview (2016); U.S.S.C., Measuring Recidivism: The Criminal
 11 History Computation of the Federal Sentencing Guidelines 12 (2004), available at
 12 [www.ussc.gov/sites/default/files/pdf/research-and-publications/research-](http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2004/200405_Recidivism_Criminal_History.pdf)
 13 [publications/ 2004/200405_Recidivism_Criminal_History.pdf](http://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2004/200405_Recidivism_Criminal_History.pdf) (“Recidivism rates
 14 decline relatively consistently as age increases”); United States Department of
 15 Justice, Office of Justice Programs, Bureau of Justice Statistics, Recidivism of
 16 Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010 12, NCJ
 17 244205 (April 2014) available at [http://www.bjs.gov/content/pub/pdf/](http://www.bjs.gov/content/pub/pdf/rprts05p0510.pdf)
 18 [rprts05p0510.pdf](http://www.bjs.gov/content/pub/pdf/rprts05p0510.pdf); Raymond E. Collins, Onset and Desistance in Criminal Careers:
 19 Neurobiology and the Age–Crime Relationship, 39 J. Offender Rehabilitation 1,
 20 1–8 (2004) (finding that neurotransmitters affecting aggression supplied at the
 synapses of brain neurons vary based on age, and may explain the decrease in
 recidivism that accompanies aging); U.S.S.G. § 5H1.1 (policy statement that age
 may be a relevant consideration at sentencing).

21 In addition to the scientifically accepted age/crime curve, that Mr. Samal
 22 maintains tight family bonds further mitigates his risk of recidivism: “In recent
 23 years, we have come to appreciate that when offenders are connected to family,
 24 and when families are well supported, reduced recidivism and thus, safer

1 communities are the result.” Eldon Vail, Secretary, Wash. St. Dep’t of Corr.,
 2 Children and Families of Incarcerated Parents (2010).

3 The Sentencing Commission’s research shows that individuals with
 4 financial dependents are less likely to recidivate than those without dependents.
 5 See “Recidivism in the First Offender” (May 2004). This positive correlation
 6 between family ties and reduction in recidivism rates is documented across study
 7 populations, time period, and methodological procedures. See, e.g., Shirely R.
 8 Klien et al., “Inmate Family Function,” 46 Int’l J. Offender Therapy & Comp.
 9 Criminology 95, 99-100 (2002). Indeed, research demonstrates that “intervening
 10 in the lives of incarcerated parents and their children to preserve and strengthen
 11 positive family connections can yield positive societal benefits in the form of
 12 reduced recidivism, less intergenerational criminal justice system involvement,
 13 and promotion of healthy child development.” Nat’l Conf. of St. Leg.’s, Children
 14 of Incarcerated Parents at 1 (2009).

15 The weight of modern social science research, finally, indicates that
 16 “incarceration—imposing it at all or increasing the amount imposed—either has
 17 no significant correlation to recidivism or *increases* the defendant’s likelihood to
 18 recidivate.” United States v. Courtney, 76 F. Supp. 3d 1267, 1304 (D.N.M. 2014)
 19 (adding emphasis) (citing, e.g., Lin Song & Roxanne Lieb, Recidivism: The Effect
 20 of Incarceration and Length of Time Served 4–6, Wash. St. Inst. for Pub. Pol’y
 21 (Sept.1993), available at http://wsipp.wa.gov/ReportFile/1152/Wsipp_Recidivism

22 At the time of his release, PK will be in his fifties and will still have a large
 23 support network and a great capacity for business success. Even if he is sentenced
 24 to a term of 18 months, he will still serve an additional two to three years in ICE
 detention.

C. MR. SAMAL WILL LIKELY HAVE TO SERVE AN ADDITIONAL TWO TO THREE YEARS IN ICE DETENTION AFTER COMPLETION OF HIS CRIMINAL SENTENCE

In consultation with several immigration attorneys and based on the publicly available statistics, it seems that after serving his criminal sentence, Mr. Samal will likely serve another two to three years in ICE detention.

Once Mr. Samal is transferred to ICE custody, he will have to wait approximately four to six months to obtain an initial hearing, an additional indeterminate period to obtain a decision, and another four to six months for an appeal to the Bureau of Immigration Affairs. This seems consistent with statistics compiled last year. See Exhibit J, Article and Chart Showing the Immigration Backlog at various locations.

If denied, an appeal to the Ninth Circuit will likely take one to two years.

Then, even after an order of removal, it is likely to take an additional 12 months to obtain the proper Indian travel documents in order to return to India. See Exhibit K, Declaration of Deportation Officer Ryan M. Jennings at 3, provided via courtesy of the Office of the Federal Public Defender. Per Mr. Jennings, it typically takes India about 12 months to issue a travel document after the United States has entered on Order of removal.

Subsequent to his federal incarceration, then, Mr. Samal is apt to serve another two to three years in ICE detention, which, according to multiple reports, is less than ideal. See, e.g., Exhibit L, Seattle Times Article, “To dispel ‘bad information,’ ICE opens detention facility in Tacoma to first-of-its kind media tour,” dated September 10, 2019.

D. REHABILITATION

While the Court must, certainly, consider the need to punish Mr. Samal in light of his offenses, deter any similar future conduct, and protect the public from his misdeeds, equally important is the need to provide the defendant with

1 correctional treatment “in the most effective manner.” See 18 U.S.C. §
 2 3553(a)(2). A different section makes this more abundantly clear:

3 The court, in determining whether to impose a term of
 4 imprisonment, and, if a term of imprisonment is to be imposed, in
 5 determining the length of the term, shall consider the factors set
 6 forth in section 3553(a) to the extent that they are applicable,
 7 recognizing that imprisonment is not an appropriate means of
 8 promoting correction and rehabilitation.

9 18 U.S.C. § 3582(a).

10 As noted above, there is a growing body of scientific studies demonstrating
 11 that prison, by disrupting employment, reducing prospects of future employment,
 12 weakening family ties, and concentrating offenders together, leads to increased
 13 recidivism, and that community treatment programs are more effective in reducing
 14 recidivism than prison based programs. See, e.g., Sentencing Project, Incarceration
 15 and Crime: A Complex Relationship, 7-8 (2005); Wash. St. Inst. for Pub. Pol’y,
 16 Evidence-Based Public Policy Options to Reduce Future Prison Construction,
 17 Criminal Justice Costs, and Crime Rates (October 2006). The rehabilitative needs
 18 of Mr. Samal are thus best achieved in through community based MRT and
 19 cognitive behavioral mental health programming, which are available on
 20 supervised release.

21 In addition, research demonstrates that unnecessarily lengthy sentences
 22 only increase the risk of recidivism due to reduction in future employment
 23 prospects, weakening family ties, and furthering institutionalization of the
 24 individual. See, e.g., The Commission’s Legislative Agenda to Restore
Mandatory Guidelines, 25 Fed. Sent. R. 293, 301 (2013). Though the certainty of
 being caught and punished does have some deterrent effect, research has shown
 that “increases in severity of punishments do not yield significant (if any) marginal
 deterrent effects.” Michael Tonry, Purposes and Functions of Sentencing, 34
 Crime & Just.1, 28 (2006).

1 E. ANALOGOUS CASES AND SENTENCING DISPARITY

2 Given that many similar cases are referred for civil litigation rather than
3 criminal prosecution and also that the sentences imposed in analogous cases
4 typically involve less than 36 months of incarceration—with no additional ICE
detention time—a sentence of 18 months is appropriate.

5 To begin, Infosys Limited, an Indian corporation, in 2013 agreed to a \$34
6 million settlement with the Government due to systemic visa fraud and abuse of
7 immigration processes. See, e.g., Exhibit M, ICE News Release dated October 29,
8 2013, “Indian corporation pays record \$34 million fine to settle allegations of
9 systemic visa fraud and abuse of immigration processes.” The wide-ranging
10 nature of the manifold violations included: fraudulently using B-1 visa holders to
11 perform skilled jobs that had to be filled by American citizens or H-1B visa
12 holders; submitting false statements in “invitation letters” to U.S. Consular
13 officials; directing the B-1 visa holders to deceive U.S. Consular officials by
14 means of a written memorandum describing the “Do’s and Don’ts”; writing and
15 revising contracts to conceal that the B-1 visa holders were performing work
16 properly done by American citizens or H-1B visa holders; billing clients for the
17 use of off-shore resources when the work was actually performed by B-1 visa
holders in the United States; and failing to maintain proper records of the foreign
nationals in the United States. Despite these serious and repeated violations, there
was no criminal prosecution.

18 In the most similar case the defense located, United States v. Guntipally, et
19 al., No. CR-16-189-LHK (N.D.Cal.), the facts are more egregious than in the
20 present case and the Court impose only 30 months of incarceration. The co-
21 defendants were charged with conspiracy, ten counts of substantive visa fraud,
22 seven counts of using false documents, and four counts of mail fraud. Venkat, the
23 co-leader of the conspiracy, pleaded guilty to conspiracy to commit visa fraud
24 involving over 100 petitions with fraudulent end client letters and admitted to
obstruction of justice by directing workers to lie to investigators and by laundering

1 money. The Court sentenced Venkat to 30 months, three years of supervised
 2 release, and a forfeiture of \$500,000. The Court also permitted his self-surrender.
 3 The co-leader of the conspiracy, Sunitha, also engaged in witness tampering and
 4 was sentenced to 52 months.

5 Here, Mr. Samal's conduct is analogous, though less serious, but he is also
 6 facing a lengthy term of ICE confinement subsequent to his federal imprisonment,
 7 which the Court should consider and incorporate when imposing sentencing.

8 **V. CONCLUSION**

9 For the foregoing reasons, a total sentence consisting of 18 months of
 10 incarceration (to be followed by 24-36 months in ICE detention) is sufficient, but
 11 not greater than necessary, to punish Mr. Samal's criminal conduct and promote
 12 the underlying purposes of sentencing.

13 DATED this 13th day of September, 2019.

14 Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of September, 2019, I electronically filed the foregoing with the clerk of the court using the CM/ECF system, which will send notification of such filing to the attorneys of record for the parties. I hereby certify that I have served any other parties of record that are non-CM/ECF participants via Tele-fax/U.S. Postal mail.

s/ Craig Suffian
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